



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[EPA-R05-OAR-2018-0285; FRL-9997-36-Region 5]

Air Plan Approval; Wisconsin; Title V Operation Permit Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving updates and revisions to the Wisconsin title V Operation Permit Program, submitted by Wisconsin pursuant to subchapter V of the Clean Air Act (Act), which requires states to develop, and to submit to EPA for approval, programs for issuing operation permits to all major stationary sources. The revision was submitted to update the title V program since the final approval of the program in 2001 and to change the permit fee schedule for subject facilities. The revision consists of amendments to Chapter Natural Resources (NR) 407 Wisconsin Administrative Code, operation permits, Chapter NR 410 Wisconsin Administrative Code, permit fees, and Wisconsin statute 285.69, fee structure. This approval action will help ensure that Wisconsin properly implements the requirements of title V of the Act.

DATES: This direct final rule will be effective **[insert date 60 days after date of publication in the Federal Register]**, unless

EPA receives adverse comments by **[insert date 30 days after date of publication in the Federal Register]**. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the Federal Register informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2018-0285 at <http://www.regulations.gov>, or via email to damico.genevieve@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA

public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Susan Kraj, Environmental Engineer, Air Permits Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-2654, kraj.susan@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. What did Wisconsin Submit?
- II. What is EPA Approving?
- III. What Action is EPA Taking?
- IV. Statutory and Executive Order Reviews.

I. What did Wisconsin Submit?

A. Background

On March 8, 2017, EPA received a request from the Wisconsin Department of Natural Resources (WDNR) that we approve revisions and updates to Wisconsin's title V operating permit program. Pursuant to subchapter V of the Act, generally known as title V, and the implementing regulations, at 40 Code of Federal Regulations (CFR) part 70, states developed and submitted to EPA

for approval programs for issuing operation permits to all major stationary sources and to certain other sources. EPA promulgated interim approval of Wisconsin's title V operating permit program on March 6, 1995 (60 FR 12128). In 2001, Wisconsin submitted corrections to the interim approval issues identified in the 1995 interim approval action as well as additional program revisions and updates. EPA took action to approve the corrections to the interim approval issues and promulgated final approval of the Wisconsin title V program on December 4, 2001 (66 FR 62951).

B. Wisconsin's Submittal

Wisconsin is seeking approval of changes and updates made to its title V program since the 1995 and 2001 approvals. EPA received WDNR's submittal updating its title V operating permit program on March 8, 2017, and supplemental information on January 26, 2018 (submittal). WDNR's submittal contains two sections, Part 1 and Part 2.

Part 1 contains previously approved program elements which are included for informational purposes, as well as Other Changes — Minor Clarifications and Corrections (which are changes that were included in WDNR's 2001 submittal that EPA did not act on or approve in the 2001 approval).

Part 2 contains title V program revisions and updates since Wisconsin's program was approved in 2001. Part 2 of the submittal contains section I - Additional State Rule Changes and Updates to the Regulations, and section II - Permit Fee Demonstration.

II. What is EPA Approving?

In this action, EPA is addressing the changes and updates in WDNR's submittal that have not been previously approved. This includes the Part 1, Section IX Other Changes - Minor Clarifications and Corrections, as well as the changes in Part 2, Sections I and II, of WDNR's submittal that relate to the Federal title V program at 40 CFR part 70.

WDNR's submittal includes changes related to several different operating permit programs, including its title V program as well its Federally Enforceable State Operating Permit (FESOP) program and its state-only enforceable operating permit program. EPA approved Wisconsin's FESOP program on January 18, 1995 (60 FR 3538). FESOP permits are those in which a source takes a federally-enforceable limit to restrict its emissions to below major source thresholds in order to avoid needing a title V permit. WDNR's State-only operating permit program is for sources with emissions below those that would require a FESOP or title V permit. In this action, EPA is only approving

provisions related to WDNR's title V operating permit program. EPA is not approving any changes or updates solely related to WDNR's FESOP or State-only operation permit programs.

For the reasons set forth below, the revisions and updates to WDNR's title V operating permits program, including the submitted amendments to the operating permits program regulations at NR 407 Wisconsin Administrative Code and fee related provisions at NR 410 and Wisconsin Statute 285.69, substantially meet the corresponding requirements of 40 CFR part 70.

A. Analysis of Part I Section IX - Minor Clarifications and Corrections

In Wisconsin's 1995 initial program approval, EPA identified several issues (in addition to the interim approval issues) that should be clarified or corrected, and WDNR agreed to make these changes. WDNR included these changes in its 2001 program submittal, but EPA only acted on the interim approval corrections at that time. For each of these additional items EPA had identified, WDNR included an analysis of the changes in its current submittal. EPA is approving the changes identified in Part I, Section IX, items 1-6 of the submittal.

B. Analysis of Part 2, Section I - Updates to Regulations.

WDNR's submittal contains over thirty revisions related to its operation permit program since the final approval in 2001. The WDNR followed all necessary procedures for adoption of changes that were made to these regulations including the WDNR's secretary's approval of the notice of public hearing, certification of publication, affidavit of mailing of the public notice to interested parties, a list of public hearing appearances, and the WDNR report on comments and response to comments.

For a detailed analysis of Part 2, Section I - Updates to Regulations, of the submittal, please refer to the Technical Support Document (TSD) for this action, which is available in the docket at the address noted above. The TSD shows that all operating permit program requirements of title V of the Act, 40 CFR part 70, and relevant guidance were met by Wisconsin's submittal.

C. Analysis of Part 2, Section II - Permit Fee Demonstration

WDNR submitted a fee demonstration because it is required by 42 U.S.C. 7661a(b)(3) and 40 CFR 70.9(a), which provide that a state program must require that the owners or operators of part 70 sources pay annual fees, or the equivalent over some other period, that are sufficient to cover the permit program costs. 42 U.S.C. 7661a(b)(3) and 40 CFR 70.9(b) provide that a

state may collect fees that cover the actual permit program costs, or may use a presumptive fee schedule, adjusted for inflation (using the Consumer Price Index). Wisconsin's fee schedule is not based on the presumptive minimum fee schedule established in 40 CFR 70.9(b) and does not provide for inflation adjustments; therefore, Wisconsin must provide a demonstration that its collected fees cover the actual permit program costs as required by 40 CFR 70.9(b)(5).

WDNR describes in its submittal the rule changes related to fees that have occurred since 2001, including changes that revised the operation permit fee structure. WDNR's current title V fee structure requires sources that are required to obtain a Federal operation permit to pay an annual air emissions tonnage fee, but sources also pay an additional annual flat fee, based on the tons of actual billable emissions. In addition, sources also pay an additional annual flat fee if the source is subject to other requirements, such as if maximum achievable control technology standards apply to the source, if one or more Federal new source performance standards apply to the source, if Federal prevention of significant deterioration permitting applies to the source, and if the source is a privately-owned coal-fired electric utility with an electric generating unit, among other flat fees.

The submittal provides tables showing the fee rate per ton of billable pollutants, the billable tons, and the total fees assessed for various years. The submittal also provides details on WDNR's revenue, work planning, and expenditures. In addition, WDNR has several mechanisms in place to ensure that fees collected from title V sources are used solely for funding title V permit activities as required by 40 CFR 70.9(a). In the submittal, WDNR compares the actual revenues collected under its fee structure to an estimate of what would be collected using the presumptive minimum fee schedule, and WDNR's actual revenues collected exceed the presumptive minimum projections. WDNR demonstrates that the level of fees collected by WDNR from federally-regulated sources is sufficient for the WDNR to adequately administer and enforce the required minimum elements of the title V permit program required in Section 502(b) of the Act.

Upon review of the information submitted, EPA finds that WDNR has demonstrated that it has adequate funding levels to support its title V program. Accordingly, Wisconsin has adequately demonstrated that the revised fee schedule has resulted in the collection of fees in an amount sufficient to cover its actual program costs, as required by 40 CFR 70.9 and the Act.

III. What Action is EPA Taking?

EPA is approving Wisconsin's submittal. This approval of the revisions and updates in Wisconsin's submittal addresses only the provisions as described above in Section II, What is EPA Approving, which pertain to the Federal title V program requirements, and does not apply to any other Federal program requirements, such as State Implementation Plans pursuant to section 110 of the Act. EPA finds that the program revisions and updates in WDNR's submittal have satisfactorily addressed the requirements of part 70, and EPA is therefore approving this submittal.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this issue of the Federal Register, we are publishing a separate document that will serve as the proposal to approve the State plan if relevant adverse written comments are filed. This rule will be effective **[insert date 60 days after date of publication in the Federal Register]** without further notice unless we receive relevant adverse written comments by **[insert date 30 days after date of publication in the Federal Register]**. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will

withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. If we do not receive any comments, this action will be effective **[insert date 60 days after date of publication in the Federal Register]**.

IV. Statutory and Executive Order Reviews.

Executive Orders 12866 and 13563: Regulatory Planning and Review

Under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011), this action is not a "significant regulatory action" and, therefore, is not subject to review by the Office of Management and Budget.

Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

This action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this state operating permit program will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this action proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

Executive Order 13132: Federalism

This action also does not have federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and

the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state operating permit program, and does not alter the relationship or the distribution of power and responsibilities established in the Act.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

In addition, the state operating permit program is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the state operating permit program does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

This action also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it proposes to approve a state operating permit program.

Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

Because it is not a "significant regulatory action" under Executive Order 12866 or a "significant energy action," this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001).

National Technology Transfer Advancement Act

In reviewing state submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a state submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a state submission, to use VCS in place of a state submission that otherwise satisfies the provisions of the Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice.

Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this action. In reviewing state operating permit program submissions, EPA's role is to approve or disapprove state choices, based on the criteria of the Act. Accordingly, this action merely approves certain state requirements and will not in-and-of itself create any new requirements. Accordingly, it does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operation permits, Reporting and recordkeeping requirements.

Dated: July 17, 2019.

Cathy Stepp,
Regional Administrator, Region 5.

40 CFR part 70 is amended as follows:

PART 70—STATE OPERATING PERMIT PROGRAMS

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Amend appendix A to part 70 by adding paragraph (d) under Wisconsin to read as follows:

**Appendix A to Part 70—Approval Status of State and Local
Operating Permits Programs**

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Wisconsin

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(d) Department of Natural Resources: Title v operating permit program revisions and updates received on March 8, 2017.

Wisconsin's Title v program is hereby updated to include these requested changes.

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[FR Doc. 2019-16336 Filed: 7/30/2019 8:45 am; Publication Date: 7/31/2019]